# National Labor Relations Board Weekly Summary of NLRB Cases

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Jackson Terrace Associates (29-RD-1037; 346 NLRB No. 18) Hempstead, NY Dec. 30, 2005. The Board reversed the Regional Director's Decision and Direction of Election and dismissed the petition. It found, contrary to the Regional Director, that the Employer and Intervenors National Organization of Industrial Trade and Industrial Production Employees Local 72 signed a collective-bargaining agreement before Petitioner Delano Thompson filed his decertification petition and, therefore, the agreement constituted a bar to the petition. [HTML] [PDF]

The Employer and the Intervenors contended that the collective-bargaining agreement was signed on Dec. 31, 2004, before the petition was filed on Jan. 18, 2005. However, the Regional Director concluded that the agreement did not bar the certification, asserting that inconsistencies in the testimony and documentary evidence made it impossible to determine when the agreement was actually signed and that the evidence therefore was too uncertain to permit a finding that it was signed before the decertification was filed. The Board determined that based on the entire record, the Employer and the Intervenors have met their burden of showing that they signed their agreement on or before Dec. 31, 2004, prior to the Jan. 18, 2005 date on which the Petitioner filed a decertification petition.

(Chairman Battista and Members Liebman and Schaumber participated.)

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Kentucky Electric Steel Acquisitions (9-CA-41511; 346 NLRB No. 20) Coalton, KY Dec. 30, 2005. The Board adopted the recommendations of the administrative law judge and found that the Respondent violated Section 8(a)(1) and (3) of the Act by refusing to consider and hire Harry Chaffin because he engaged in protected concerted conduct, and violated Section 8(a)(1) and (4) by refusing to consider Chaffin for employment because he filed an unfair labor practice charge. [HTML] [PDF]

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Harry K. Chaffin, an Individual; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Ironton, OH, April 12-13, 2005. Adm. Law Judge Michael A. Rosas issued his decision Sept. 14, 2005.

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Mail Contractors of America, Inc., Kansas City Terminal (17-CA-21836; 346 NLRB No. 16) Kansas City, KS Dec. 28, 2005. The Board adopted the recommendations of the administrative law judge and dismissed the complaint allegations that the Respondent violated Section 8(a)(1) and (5) of the Act by making unilateral changes in a health benefit plan for a unit of employees at the Employer's terminal in Kansas City, Kansas, without affording the exclusive representative of the employees prior notice and an adequate opportunity to bargain. [HTML] [PDF]

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Postal Workers Des Moines Area Local; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Overland Park, KS, Aug. 26-27 and Nov. 4-6, 2003. Adm. Law Judge Thomas M. Patton issued his decision Sept. 9, 2004.

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Pan American Grain Co., Inc. and Pan American Grain Mfg. Co., Inc. (24-CA-10014; 346 NLRB No. 21) San Juan, PR Dec. 30, 2005. The Board adopted the recommendations of the administrative law judge and found that by failing and refusing, since Aug. 17, 2004, to furnish Congreso de Uniones Industriales de Puerto Rico with the information requested in the Union's letters dated Aug. 17, Sept. 8, and Oct. 5, 2004, the Respondent has failed and refused to bargain in good faith in violation of Section 8(a)(1) and (5) of the Act. [HTML] [PDF]

The Board, in agreement with the judge, found it appropriate to issue a broad remedial order given the number, variety, and seriousness of the Respondent's unfair labor practices in this and other cases. It wrote: "We find that the Respondent has demonstrated a proclivity to violate the Act, not just Section 8(a)(5), as here, but also the Act as a whole. Further, the Respondent has repeatedly disregarded its obligation to provide relevant information sought by the Union. . . . [T]his is the third time in a 5-year period that the Respondent has willfully refused to provide relevant information."

Member Schaumber joined his colleagues in issuing a broad order. He agreed, as certain of the cases cited reflect, "that the Respondent has engaged in a widespread and persistent pattern of attempts by varying methods, to interfere with legislatively protected rights, and that this pattern of conduct demonstrates a general disregard for fundamental statutory rights and raises the threat of continuing and varying efforts to frustrate those rights in the future."

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Congreso de Uniones Industriales de Puerto Rico; complaint alleged violation of Section 8(a)(1) and (5). Hearing at San Juan on Aug. 3, 2005. Adm. Law Judge Michael A. Marcionese issued his decision Aug. 26, 2005.

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WGE Federal Credit Union (25-CA-29101; 346 NLRB No. 19) Muncie, IN Dec. 30, 2005. Chairman Battista and Member Schaumber, with Member Liebman dissenting, granted the Respondent's motion to file exceptions and brief in support beyond the time prescribed in the Board's Rules and Regulations. Accordingly, they transmitted the Respondent's exceptions and brief in support to the Board for consideration and advised the parties that pursuant to Section 102.111(c) of the Board's Rules and Regulations, briefs responding to the documents and/or cross-exceptions are due in Washington, DC by close of business Jan. 13, 2006. [HTML] [PDF]

Exceptions to the administrative law judge's decision were due on Sept. 7, 2005. The Respondent submitted its exceptions and brief in support using the Board's e-filing procedures on its Web site on Sept. 7 at 5:30 p.m. and 5:42 p.m. respectively. By letter dated Sept. 8, the Board's Associate Executive Secretary rejected the filings as untimely as the documents were received after the 5:00 p.m. "official closing time" of the Board. See Section 102.111(b) of the Board's Rules and Regulations.

The Respondent's counsel asserted that based on her experience with federal court e-filings, she incorrectly thought that she had until midnight on Sept. 7, 2005 to timely e-file exceptions. Shortly before 5 p.m. on the due date, counsel stated that she became aware that the Board's rules required that this filing occur by 5 p.m. When she spoke to the Board's Executive Secretary's Office about the deadline, she was told that she could seek an extension of time, but that there were no assurances that the request would be granted. Therefore, counsel decided to try to complete and file the exceptions and brief by the 5 p.m. deadline.

Chairman Battista and Member Schaumber concluded that although counsel for Respondent was guilty of neglect, the issue was whether the Board should, equitably, excuse this neglect. In this case, the majority concluded that they should excuse the neglect, noting that the attorney tried mightily, and in good faith, to complete the exceptions in time and, while she missed the deadline by a matter of minutes, no one was prejudiced by the delay.

Member Liebman would deny the Respondent's motion, which is opposed by the General Counsel and the Charging Party, saying "the Respondent fails to point to any substantial reason for excusing the neglect of its counsel." She noted that Respondent's counsel was charged with knowing the Board's rules and procedures, those rules and procedures were clear, and no factors outside of her control impeded her from complying with them. Member Liebman added that while the Board now permits parties to submit exceptions and any supporting brief electronically, such documents must be "received by the Board . . . before the official closing time [5:00 p.m.] . . . on the last day of the time limit."

(Chairman Battista and Members Liebman and Schaumber participated.)

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#### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Lambard Inc. (Tile, Marble & Terrazzo Local 18) Chino, CA Dec. 27, 2005. 31-CA-26983; JD(SF)-83-05, Judge Thomas M. Patton.

*Teamsters Local 705* (Pickens-Kane Moving & Storage Co.) Chicago, IL Dec. 23, 2005. 13-CB-18123-1; JD-94-05, Judge David I. Goldman.

Angotti Healthcare Systems, Inc. d/b/a St. Joseph Ambulance Service (EMTS and Paramedics SEIU-NAGE) San Raphael, CA Dec. 29, 2005. 20-CA-32436, 20-RC-18009; JD(SF)-85-05, Judge Burton Litvack.

#### NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file a timely answer to the complaint.)

*R-Max Services, LLC* (Teamsters Local 355) (5-CA-32210; 346 NLRB No. 17) Bridgeville, DE Dec. 30, 2005. [HTML] [PDF]

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#### **TEST OF CERTIFICATION**

(In the following cases, the Board granted the General Counsel's motion for summary judgment on the ground that the Respondent has not raised any representation issue that is litigable in the unfair labor practice proceeding.)

*The George Washington University* (Service Employees Local 500) (5-CA-32568; 346 NLRB No. 13) Washington, DC Dec. 28, 2005. [HTML] [PDF]

Laurel Baye Healthcare of Lake Lanier, LLC (Food & Commercial Workers Local 1996) (10-CA-35752; 346 NLRB No. 15) Buford, GA Dec. 28, 2005. [HTML] [PDF]

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## LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

#### DECISION AND CERTIFICATION OF REPRESENTATIVE

West Side House Corp. d/b/a West Side House, Worcester, MA, 1-RC-21917, Dec. 27, 2005 (Chairman Battista and Members Liebman and Schaumber)

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(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

ASR International Corp., Richmond, CA, 32-RC-21917, Dec. 27, 2005 (Chairman Battista and Members Liebman and Schaumber)

#### Miscellaneous Board Orders

# CERTIFICATION OF REPRESENTATIVE AS BONA FIDE UNDER SECTION 7(B) OF THE FAIR LABOR STANDARDS ACT OF 1938

Marin County Probation, San Rafael, CA, 20-WH-15, Dec. 29, 2005

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